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IN THE

Supreme Court of the United States

October Term, 1955

Nos. 309, 310, 311

Oleta O'Connor Yates, Henry Steinberg, Doretta Starvus Stack, Frank Kenneth Spector, William Schneiderman, Al Richmond, Albert James Lima, Carl Ruth Lambert, Rose Chernin Kunitz, Ernest Otto Fox, Ben Dobbs, Dorothy Healey Connelly, Philip Marshall Connelly and Frank Carlson,

Petitioners,

vs.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Motion by American Civil Liberties Union, Southern California Branch, for Leave to File Brief Amicus Curiae.

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OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY and FRANK CARLSON,

Petitioners,

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UNITED STATES OF AMERICA.

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Pursuant to Rule 42(1) and (3) of this court, the American Civil Liberties Union, Southern California Branch, respectfully requests leave to file a brief *amicus curiae* in support of petitioners.

The main thrust of *amicus* requested brief is that the Smith Act exceeds the power of Congress. This ques-

tion of law has not been presented by the parties. We believe it should be.

The government claims that the petitioners are members and officers of the Communist Party. We understand that there is no denial of such membership and the holding of such offices by most, if not all, of the petitioners. *Amicus* has no brief for the views of petitioners. On the contrary, it quite clearly opposes them. *Amicus* has stated its position against Communists and Communism so often in briefs *amicus* filed with this court before, that there is no need of repetition here.

It is the view of *amicus,* however, that the prosecutions here involved are beyond the power of Congress to permit and violate fundamental First Amendment freedoms. Accordingly it filed a brief *amicus* in both courts below. It was likewise the view of *amicus* that these constitutional principles were violated by the decision of the majority of this court in *Dennis v. United States,* 341 U. S. 494. The position of *amicus* on the Smith Act since *Dennis* is this:

> "The decision of the Supreme Court upholding the Smith Act of 1940 has not changed the position of the American Civil Liberties Union, and we find no barrier to further legal testing or to further criticism of its wisdom. We are convinced that this sedition law, and others like it, must be overruled by the force of later decisions or repealed by legislative action in order that we may live again under the full protection of the Bill of Rights." (*The Smith Act and the Supreme Court,* p. 4, pamphlet published by ACLU, New York, April, 1952.)

Amicus' criticism of the law is shared not only by a minority of this court, as set forth in the dissents in *Dennis,* but also by other responsible organizations.

Thus the Congress of Industrial Organizations, whose views on Communists and Communism are also well known to this court, at its 1953 Cleveland convention (p. 34, Daily Proceedings, Nov. 18, 1953) announced:

> "We again call upon Congress to review and revise the existing security laws, such as the Smith Act and the Subversive Activities Control Act, so that the security of the nation shall be safeguarded against acts of sabotage and espionage without subjecting individuals to persecution on the basis of speech, advocacy, or belief alone."

Amicus believes that its approach to the grave constitutional questions involved in this case, as set forth in its brief, is unique and from a different point of view; so that it will be of assistance to the court in arriving at its decision.

Respectfully submitted,

MORRIS E. COHN,

FRED OKRAND,

Attorneys for Amicus Curiae.